IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.10. 2009

CORAM:-

Hon'ble Mr. Justice R. SUDHAKAR

Writ Petition No. 12916 of 2001
and
M.P.Nos.18998 of 2001

Ramachandani Shyam .. Petitioner

Vs.

1. Joint Secretary to the
Government of India,
Minisitry of finance,
(Department of Revenue)
New Delhi

2. The Commissioner of Customs(appeals)
Customs House,
Chennai.

3. The Commissioner of Customs.
Custom House,
Madras .. Respondents

. . .

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of of a writ of Certiorarified mandamus to call for the records relating to the orders passed in Order No.560 of 2000 dated 08.11.2000 by the first respondent herein in Revision petition modifying the order in C4/253/0/2000-AIR,C.Cus.No.425/2000 dated 12.06.2000 passed by the second respondent herein in Appeal filed by the petitioner against the order of the third respondent in O.S.No.5750 of 1999 dated 01.12.1999, quash the same and direct the respondents to re-export all the goods without penalty and fine.
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For Petitioner : Mr.K.M.Venugopal

For respondents : Mr. T.R.Senthilkumar

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O R D E R

The writ petition has been filed to quash the orders passed in No.560 of 2000 dated 08.11.2000 by

the first respondent in Revision petition modifying the order in C4/253/0/2000-AIR,C.Cus.No.425/2000 dated 12.06.2000 of the second respondent in Appeal filed against the order of the third respondent in O.S.No.5750 of 1999 dated 01.12.1999.

2. The petitioner, in this case, is a foreign citizen holding Philippines Passport, arrived at the Indian Airlines and declared the value of the electronic goods was Rs.50,000/-. On examination of the baggage, the Customs Department found that the value of the goods was Rs.2,12,700/-. Therefore, proceedings were initiated under the Provisions of the Customs Act. The petitioner waived show cause notice and was granted a personal hearing during which, it was stated that the goods were brought to India to be given as gift to his friends and for personal use. Since the goods were found in commercial quantity, the Additional Commissioner of Customs confiscated the goods invoking Section 111 (d)(l)(m) of the Customs Act 1962. He, however, allowed the petitioner-passenger to redeem the goods on payment of fine of Rs.1, 06,000/- as provided under Section 125 of the Customs Act and the personal penalty of Rs.21,000/- under Section 112(a) of the Customs Act. The petitioner paid the personal penalty amount levied.

3. The petitioner filed an appeal to the Commissioner of Customs (Appeals) where a request was made to re-export the goods stating that the goods are not in trade quantity and they are over valued and the redemption fine imposed was very high. It is his further plea that the goods are not for sale but for the use of family members. The Commissioner of Customs (Appeals)modified the said order and allowed to re-export the goods on payment of fine of Rs.65,000/-. The appellate authority, confirmed the penalty of Rs.21,000/-.

4. Thereafter, the petitioner-passenger filed a Revision before the first respondent, Joint Secretary to the Government of India, Ministry of Finance. Before the said authority, it was pleaded by the learned counsel for the petitioner that the petitioner's children were studying in Chennai and the goods were brought for children and to give as gifts to the family members who are taking care of the children. The counsel also pleaded that the quantity of the goods were not mis-declared and they were not in commercial quantity. The higher penalty and the fine should be reduced, if not totally set aside.

5. Considering the above submissions, the first respondent modified the order of re-export and allowed redemption of goods for home consumption. The Revisional authority held that mis-declaration is proved and goods are of commercial quantity. Keeping in mind the mis-declaration of value, and that the goods were brought in commercial quantity in the name of personal use and gift, imposed redemption fine of Rs.77,000/- as against Rs.1,06,000/- imposed by the Adjudicating authority. The quantum of penalty was not interfered with. Aggrieved by the said order, the present writ petition has been filed by the petitioner.

6. The main plea taken in the writ petition is that the first respondent should have allowed to re-export the goods by setting aside the redemption fine and penalty. This writ petition has been filed reiterating the factual pleadings stated by the petitioner before the statutory authority. It is stated that the redemption fine and penalty imposed is excessive. In alternative it is pleaded that the goods should be allowed to be re-export without redemption fine and penalty considering the bonafide nature of the import of the goods.

7. A counter has been filed by the Department refuting the allegations of the petitioner. According to the department, the goods are in commercial quantity. According to the department, there is mis-declaration in the value of goods with a view to evade payment of customs duty and therefore, the impugned order was rightly passed. The quantum of fine and penalty is justified in the facts and

circumstances of the case. The Revisional authority considered the case on merits in its proper perspective, passed the impugned order and there is no illegality or infirmity in the impugned order to challenge the same before this Court.

8. As far as merits of the case is concerned, the facts remains that the value of the goods have been declared as Rs.50,000/-; however, on examination the authorities found that the value of the goods was Rs.2,12,700/-. Therefore, there is mis-declaration with regard to the value of the goods. The authorities also found that the goods are in commercial quantity brought by the passenger coming from abroad. This will be supported by documents, namely, mahazar. Therefore, on both grounds, as per Section 111 of Customs Act, authorities have initiated action for confiscation. The grievance of the petitioner apparently is only on the quantum of fine and penalty. As against the order passed by the original authority fixing the redemption fine at Rs.1,06,000/- the revisional authority has reduced it to Rs.77,000/-. The penalty has been confirmed by all the authorities. Imposing appropriate redemption fine and penalty are matters purely at the discretion of the adjudicating authority or the appellate authority taking into consideration the provisions of the Customs Act. Therefore, this Court is not inclined to go into the merits of the facts of the case to interfere with the quantum of fine or penalty imposed on the petitioner.

9. Under Section 129 DD of the Customs Act, power is given to the Revisional authority to annul or modify any order, if a Revision is filed before the Revisional Authority/Central Government by a person aggrieved. In the present case, the first respondent, the Revisional Authority has modified the order of re-export to one of release of goods for home consumption on payment of redemption fine and penalty as ordered by the original authority. Such an order is well within the power of the Revisional Authority conferred under Section 129 DD of the Customs Act. I find no reason to interfere with the order passed by the Revisional Authority. There is no illegality or flaw in the order under challenge.

10. In the result, finding no merit, the writ petition is dismissed. Connected miscellaneous petition is closed. No costs.

PAL

To

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